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State of New Jersey  
Department of Labor and  
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PO Box 110  
Trenton, New Jersey  
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**RE: DIVISION OF EMPLOYER ACCOUNTS  
Contributions, Records and Reports**

**Proposed Amendments: N.J.A.C. 12:16-4.7, 5.6, 13.1, 13.3, 13.7, 18.1, 18.3 and 18.4**

Attached please find the above-referenced matter which was published in the August 21, 2006 *New Jersey Register*.

If you have any questions, please contact David Fish, Regulatory Officer at (609) 292-2789.

## LABOR AND WORKFORCE DEVELOPMENT

(a)

### DIVISION OF EMPLOYER ACCOUNTS

#### Contributions, Records and Reports

#### Proposed Amendments: N.J.A.C. 12:16-4.7, 5.6, 13.1, 13.3, 13.7, 18.1, 18.3 and 18.4

Authorized By: David J. Socolow, Acting Commissioner,  
Department of Labor and Workforce Development.

Authority: N.J.S.A. 43:21-1 et seq.; specifically, N.J.S.A. 43:21-7g.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2006-273.

A public hearing on the proposed amendments will be held on the  
following date at the following location:

Monday, September 25, 2006

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-  
2789 if you wish to be included on the list of speakers.

Submit written comments by October 20, 2006 to:

David Fish, Regulatory Officer

Office of Legal and Regulatory Services

Department of Labor and Workforce Development

P.O. Box 110, 13th Floor

Trenton, New Jersey 08625-0110

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(TTY) 1-800-852-7899.

The agency proposal follows:

#### Summary

The Department is proposing amendments to N.J.A.C. 12:16-5.6, 18.1,  
18.3 and 18.4 in order to implement P.L. 2005, c. 239, which, in  
accordance with the Federal "SUTA Dumping Prevention Act of 2004,"  
P.L. 108-295, amended the State's Unemployment Compensation Law,  
N.J.S.A. 43:21-1 et seq., so as to prevent employers from engaging in a  
practice commonly referred to as "SUTA Dumping." This practice  
involves employers manipulating the State experience rating system so



that they pay lower State unemployment compensation (UC) taxes than their unemployment experience would otherwise dictate.

Under the State experience rating system, the unemployment tax rate of an employer is based on the amount of UC paid to former employees. The more UC paid to a particular employer's former employees, the higher the tax rate of the employer. The following are two common methods of SUTA Dumping:

1. An employer escapes poor experience (and high experience rates) by setting up a shell company and then transferring some or all of its workforce (and the accompanying payroll) to the shell company after the shell has earned a low experience rate. The transferred payroll is then taxed at the shell's lower rate, and

2. An entity commencing a business purchases an existing small business with a low UC tax rate. Instead of being assigned the higher new employer rate, the entity receives the small business's lower rate. Typically, the new business ceases the business activity of the purchased business and commences a different type of business activity.

In order to prevent these types of abuses of New Jersey's UC experience rating system, and in accordance with both New Jersey P.L. 2005, c. 239 and the Federal SUTA Dumping Prevention Act of 2004, P.L. No. 108-295, the Department is proposing amendments to N.J.A.C. 12:16-18.1, which concerns the transfer of a predecessor employer's whole employment experience, N.J.A.C. 12:16-18.3, which concerns the transfer of a predecessor employer's experience in part, and N.J.A.C. 12:16-18.4, which concerns the calculation of the employment experience rate following transfer of a predecessor employer's experience in part, and N.J.A.C. 12:16-5.6, which concerns the voluntary payment of additional contributions. The proposed amendments to these rules ensure the Department consistency between the law governing the calculation of UC experience rates (cited below) and the rules used by the Department to enforce that law.

N.J.S.A. 43:21-7(c)(7)(A), (D), (E) and (F), as amended by P.L. 2005, c. 239, appear in the statutes as follows (with additions resulting from P.L. 2005, c. 239 indicated in boldface **thus**; deletions indicated in brackets [thus]):

(7) Transfers

(A) Upon the transfer of the organization, trade or business, or substantially all the assets of an employer to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, the controller shall transfer the employment experience of the predecessor employer to the successor in interest, including credit for past years, contributions paid, annual payrolls, benefit charges, et cetera, applicable to such predecessor employer, pursuant to regulation, if it is determined that the employment experience of the predecessor employer with respect to the organization, trade, assets or business which has been transferred may be considered indicative of the future employment experience of the successor in interest. [Unless the predecessor employer was owned or controlled (by legally enforceable means or otherwise), directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled (by legally enforceable means or otherwise), directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such] **The successor in interest may, within four months of the date of such transfer of the organization, trade, assets or business, or thereafter upon good cause shown, [files a written notice protesting the transfer of the employment experience of the predecessor employer] request a reconsideration of the transfer of employment experience of the predecessor employer. The request for reconsideration shall demonstrate, to the satisfaction of the controller, that the employment experience of the predecessor is not indicative of the future employment experience of the successor.**

(B) and (C) (No change.)

(D) **If an employer who transfers in whole or in part his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the employer and successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business shall also be transferred to and combined with the employment experience**

of the successor in interest. The transfer of the employment experience is mandatory and not subject to appeal or protest.

(E) The transfer of part of an employer's employment experience to a successor in interest shall become effective as of the first day of the calendar quarter following the acquisition by the successor in interest. As of the effective date, the successor in interest shall have its employer rate recalculated by merging its existing employment experience, if any, with the employment experience acquired. If the successor in interest is not an employer as of the date of acquisition, it shall be assigned the new employer rate until the effective date of the transfer of employment experience.

(F) Upon the transfer in whole or in part of the organization, trade, assets or business to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the controller finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

In addition, N.J.S.A. 43:21-7(c)(6), as amended by P.L. 2005, c. 239, states that following a transfer as described under N.J.S.A. 43:21-7(c)(7)(D) – in other words, a transfer in whole or in part between a predecessor employer and successor in interest who at the time of the transfer are under common ownership, management or control — neither the predecessor employer nor the successor in interest shall be eligible to make a voluntary payment of additional contributions during the year the transfer occurs and the next full calendar year.

In addition, the Department is proposing a number of amendments which are unrelated to P.L. 2005, c. 239 or the Federal SUTA Dumping Prevention Act of 2004, P.L. No. 108-295. Included among those non-SUTA Dumping amendments, the Department is proposing that N.J.A.C. 12:16-4.7 be amended so as to make clear that when existing N.J.A.C. 12:16-4.7(c) states that, "All wages paid to aliens are taxable and reportable under a valid Social Security number," the term "aliens" includes both aliens who are workers legally admitted to the United States and aliens who are workers and whose work status remains undocumented. N.J.S.A. 43:21-19(i)(1) defines the term "employment" for purposes of the requirements under the Unemployment Compensation Law to mean, "Any service . . . performed for remuneration or under any contract of hire, written or oral, express or implied." The law makes no distinction between services performed by (and remuneration paid to) United States citizens versus services performed by (and remuneration paid to) aliens, which explains the existing rule at N.J.A.C. 12:16-4.7(c). Similarly, the law makes no distinction between legal and illegal aliens. Since, over time, the Department has received numerous inquiries as to whether the legal status of aliens affects the taxability of remuneration paid to such individuals, the Department believes that it is appropriate to amend this section at this time as discussed above.

Also, the Department is proposing amendments to N.J.A.C. 12:16-13.1, 13.3, and 13.7, which reflect changes resulting from the Governor's Reorganization Plan 003-1998. Under the reorganization plan, the Division of Revenue, within the Department of the Treasury, receives and processes quarterly contribution and wage reports for the Department of Labor and Workforce Development. Thus, the Department is proposing that N.J.A.C. 12:16-13.1 be amended so as to indicate that every employer shall file with the Division of Revenue (as opposed to the Controller) all contribution and statistical reports and reports of wages paid to individual workers as may be required by the Controller and that every employing unit shall file, with the Division of Revenue such reports as may be required by the Controller with respect to employment, as shall be necessary to determine its status under the law. Thus, the rule would reflect that although under the Unemployment Compensation Law it is the Controller, within the Department of Labor and Workforce Development, who requires the filing of these reports, the reports themselves are required under Reorganization Plan 003-1998 to be physically filed by employers with the Division of Revenue, within the Department of the Treasury.

Similarly, whereas existing N.J.A.C. 12:16-13.3 indicates that the penalty for delinquency in filing reports is computed for each report from and including the day after such report is due through the post mark date on the envelope in which the report is received by the Controller, the Department is proposing that N.J.A.C. 12:16-3.3 be amended so as to



reflect that such reports are now received by the Division of Revenue, rather than by the Controller, and incorporate the Division of Revenue's existing practice whereby it considers a report delinquent from and including the day after the report is due through the date of receipt, rather than through the post mark date.

Finally, within N.J.A.C. 12:16-13.7, which concerns wage reporting, the Department is proposing that all references to the filing of reports with the Controller or his or her designee be replaced by references to such reports being filed, "as required by the Controller, with the Division of Revenue, within the Department of the Treasury." In addition, the Department is proposing that N.J.A.C. 12:16-13.7 be amended so that wherever the existing rules indicate that the form and manner of filing reports shall be prescribed by the Controller, the form and manner of filing reports would now be prescribed by the Division of Revenue, within the Department of the Treasury. Each of these proposed amendments to N.J.A.C. 12:16-13.7 is consistent with the Governor's Reorganization Plan 003-1998.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The proposed amendments prompted by the enactment of P.L. 2005, c. 239 and the Federal "SUTA Dumping Prevention Act of 2004," P.L. 108-295, namely, the proposed amendments to N.J.A.C. 12:16-5.6, 18.1, 18.3 and 18.4, would have a positive social impact in that they would assist the Department in fulfilling its fiduciary duty to protect the unemployment compensation fund from employers who manipulate the experience rating system in such a way as to pay less than their fair share of unemployment insurance costs. The State's employment experience rating system was designed to ensure that all employers are rated (and make contributions to the unemployment compensation fund) based on actual employment experience. The financial health of the fund is dependent upon the effective use of the State's experience rating system to ensure the availability of monies to pay out unemployment insurance claims. Any effort to prevent the manipulation of the State's experience rating system in such a way that would adversely affect the unemployment compensation fund benefits all stakeholders in the unemployment compensation system, including employers, employees, displaced workers and taxpayers.

The proposed amendment to N.J.A.C. 12:16-4.7 would have a positive social impact in that it would eliminate any possible confusion as to whether the legal status of aliens affects the taxability of remuneration paid to such individuals. As indicated in the Summary above, the Department has fielded a number of inquiries with regard to this issue and believes that it would be helpful to the regulated community if the rules were amended so as to explicitly state that when N.J.A.C. 12:16-4.7(c) indicates that all wages paid to "aliens" are taxable, it means both aliens who are workers legally admitted to the United States and aliens who are workers and whose work status remains undocumented.

The proposed amendments prompted by Reorganization Plan 003-1998, namely, the proposed amendments to N.J.A.C. 12:16-13.1, 13.3 and 13.7, would have a positive social impact in that they would make clear to which State agency employers must submit contribution and statistical reports and reports of wages paid to individual workers. Whereas employers might intuitively think that such reports must be submitted to the Department of Labor and Workforce Development, the agency which is responsible for administering the Unemployment Compensation Law, the proposed amendments will make clear to employers that such reports must be filed instead with the Division of Revenue, within the Department of the Treasury.

#### **Economic Impact**

The proposed amendments prompted by the enactment of P.L. 2005, c. 239 and the Federal "SUTA Dumping Prevention Act of 2004," P.L. 108-295, namely, the proposed amendments to N.J.A.C. 12:16-5.6, 18.1, 18.3 and 18.4, would have a negative economic impact upon those employers who engage in precisely the types of employment experience rating manipulation (SUTA Dumping) discussed in detail within the Summary above. Specifically, the proposed amendments would result in

higher employment experience ratings for employers who engage in the following methods of SUTA Dumping:

1. An employer who escapes poor experience (and high experience rates) by setting up a shell company and then transferring some or all of its workforce (and the accompanying payroll) to the shell company after the shell has earned a low experience rate. The transferred payroll is then taxed at the shell's lower rate, and

2. An entity commencing a business which purchases an existing small business with a low UC tax rate. Instead of being assigned the higher new employer rate, the entity receives the small business's lower rate. Typically, the new business ceases the business activity of the purchased business and commences a different type of business activity.

This negative impact upon certain employers is the stated purpose of P.L. 2005, c. 239, which prompted the proposed amendments. It is anticipated that this negative economic impact upon such employers will result in a more equitable and fiscally sound administration of the unemployment compensation fund, which will, on the whole, inure to the economic advantage of all stakeholders in the unemployment compensation system, including employers, employees, displaced workers and taxpayers. Moreover, each proposed amendment to N.J.A.C. 12:16-5.6, 18.1, 18.3 and 18.4 is explicitly mandated by P.L. 2005, c. 239. The Department has no discretion to deviate from this mandate.

The proposed amendments to N.J.A.C. 12:16-4.7, 13.1, 13.3 and 13.7 would have no economic impact, positive or negative, in that the proposed amendment to N.J.A.C. 12:16-4.7 simply clarifies the meaning of the term "alien" under an existing rule and the proposed amendments to N.J.A.C. 12:16-13.1, 13.3 and 13.7 simply direct to which State agency employers must submit reports which are already required under the Unemployment Compensation Law. Specifically regarding the proposed amendment to N.J.A.C. 12:16-4.7, as discussed in the Summary above, wages paid to all aliens (both legal and undocumented) have always been taxable and reportable under the law. The proposed amendment is intended to eliminate any possible confusion regarding the effect of an alien's legal status on the taxability of remuneration paid to such individuals. None of these amendments would result in increased costs to employers, employees or displaced workers.

#### **Federal Standards Statement**

The proposed amendments do not exceed standards or requirements imposed by Federal law or regulation. Specifically, the proposed amendments are consistent with the Federal Unemployment Tax Act, 26 U.S.C. §3301, et seq., and the regulations promulgated in accordance therewith, 20 CFR §601, et seq. Consequently, no Federal standards analysis is required.

#### **Jobs Impact**

The proposed amendments would have no impact on either the generation or loss of jobs.

#### **Agriculture Industry Impact**

The proposed amendments would have no impact on the agriculture industry.

#### **Regulatory Flexibility Statement**

The proposed amendments would impose no reporting, record keeping or other compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. With regard to professional services required for compliance with the proposed amendments, the proposed amendment to N.J.A.C. 12:16-18.1 would indicate that where employment experience has been transferred by the Department from a predecessor employer to a successor in interest based on a finding that the employment experience of the predecessor with respect to the organization, trade, business, or assets so transferred is indicative of the anticipated employment experience of the successor in interest, the successor in interest may request reconsideration of the transfer of employment experience, but must demonstrate to the satisfaction of the Controller or his or her designee that the employment experience of the predecessor employer is not indicative of the future employment experience of the successor in interest. In order to prepare a petition for reconsideration which addresses this standard, employers, including small businesses, may wish to employ the services of an accountant or an attorney.



**Smart Growth Impact**

The proposed amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

**12:16-4.7 Back pay, residuals, aliens**

(a)-(b) (No change.)

(c) All wages paid to aliens are taxable and reportable under a valid Social Security number. **This subsection applies both to aliens who are workers legally admitted to the United States and to aliens who are workers and whose work status remains undocumented.**

**12:16-5.6 Voluntary payment of additional contributions**

(a)-(c) (No change.)

(d) The voluntary payment of additional contributions will not affect employers having one of the following:

1. The basic rate which is assigned where an employer has not been subject to the Law during some period in each of the last three consecutive calendar years[.];

2. A specially assigned rate, determined by the employer's reserve balance and the unemployment trust fund reserve ratio, which rate is assigned because during the past three calendar years, there has been, at least, one calendar year in which no contributions have been paid, even though there was covered employment[.]; or

3. **During the year the transfer occurs and the next full calendar year, the rate assigned under N.J.S.A. 43:21-7(c)(7)(D) when an employer transfers in whole or in part his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the predecessor employer and the successor in interest are, at the time of the transfer, under common ownership, management or control.**

(e) (No change.)

**12:16-13.1 Reports required**

Every employer shall file with the Division of Revenue, within the Department of the Treasury, such contribution and statistical reports, and reports of wages paid to individual workers as may be required by the Controller or his or her designee, and every employing unit shall file with the Division of Revenue, within the Department of the Treasury, such reports as may be required by the Controller or his or her designee with respect to employment as shall be necessary to determine its status under the law.

**12:16-13.3 Penalty for failure to file reports**

(a) The penalty prescribed by N.J.S.A. 43:21-14(a) for delinquency in filing reports (except for such reports as may be required under N.J.S.A. 43:21-6(b)(2) of the Unemployment Compensation Law) shall be computed for each report from and including the day after such report is due through the [post mark date on the envelope in which the report is received by the Controller or his or her designee] **date of receipt recorded by the Division of Revenue, within the Department of the Treasury.**

(b) (No change.)

**12:16-13.7 Wage reporting**

(a) Each employer other than employers of domestic service workers shall file a report, as required by the Controller, with the [Controller or his or her designee] **Division of Revenue, within the Department of the Treasury, within 30 days after the end of each quarter in a form and manner prescribed by the [Controller or his or her designee] Division of Revenue, within the Department of the Treasury, listing the name, social security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns.**

(b) (No change.)

(c) Effective January 1, 2001 and each year thereafter, each employer of domestic service workers shall file an annual Employer Report of Wages Paid, as required by the Controller, with the [Controller or his or her designee] **Division of Revenue, within the Department of the**

**Treasury, listing the name, social security number and wages paid to each employee and the number of base weeks worked each quarter during the preceding calendar year. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns. For the calendar year ending December 31, the report would be due January 31 following the close of the calendar year.**

1. (No change.)

(d) (No change.)

(e) The following pertains to magnetic media reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 1994 all employers who would report in excess of 250 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the [Controller or his or her designee] **Division of Revenue, within the Department of the Treasury.**

2. For all calendar quarters subsequent to the quarter ending December 31, 1995 all employers who would report in excess of 100 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the [Controller or his or designee] **Division of Revenue, within the Department of the Treasury.**

3. For all calendar quarters subsequent to the quarter ending December 31, 1994, all third-party payroll processors who on a quarterly basis generate and file Form WR-30 "Employer Report of Wages Paid," and Form NJ-927 "Employer's Quarterly Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media in a form and manner specified by the [Controller or his or her designee] **Division of Revenue, within the Department of the Treasury, if the aggregate number of employees for all clients processed and so reported by the third-party exceeds 100 in any calendar quarter.**

4. For all calendar quarters subsequent to the quarter ending December 31, 2000, all employers who would report in excess of 50 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such reports via magnetic media in a form and manner specified by the [Controller or his or her designee] **Division of Revenue, within the Department of the Treasury.**

5. For all calendar quarters subsequent to the quarter ending December 31, 2000, all third-party payroll processors who on a quarterly basis generate and file Form WR-30, "Employer Report of Wages Paid," and Form NJ-927, "Employer's Quarterly Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media in a form and manner specified by the [Controller or his or her designee] **Division of Revenue, within the Department of the Treasury, if the aggregate number of all employees for all clients processed and so reported by the third-party exceeds 50 in any calendar quarter.**

6. For all calendar quarters subsequent to the quarter ending December 31, 2005, all employers who would report in excess of 10 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such reports via electronic means in a form and manner specified by the [Commissioner or his or her designee] **Division of Revenue, within the Department of the Treasury.**

7. For all calendar quarters subsequent to the quarter ending December 31, 2005, all third-party payroll processors who on a quarterly basis generate and file Form WR-30, "Employer Report of Wages Paid," and Form NJ-927, "Employer's Quarterly Report," together with payment of contributions liability shall file the WR-30 reports for all clients via electronic means in a form and manner specified by the [Commissioner or his or her designee] **Division of Revenue, within the Department of the Treasury, if the aggregate number of all employees for all clients processed and so reported by the third party exceeds 10 in any calendar quarter.**

8. Employers or third-party payroll processors may have the requirements in (e)1 through 7 above waived or extended for good cause as defined in N.J.A.C. 12:19-1.2 upon written application for a waiver or extension to the Commissioner or his or her designee.

9.-10. (No change.)

**12:16-18.1 Transfer of predecessor's whole experience**

(a) (No change.)



(b) [Unless the predecessor employer was owned or controlled, directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such] The successor in interest may, within four months of the date of such transfer of the organization, trade or business, or assets, or thereafter upon good cause shown, [files a written notice protesting the transfer of employment experience of the predecessor employer] request a reconsideration of the transfer of employment experience of the predecessor employer. The request for reconsideration shall demonstrate to the satisfaction of the Controller or his or her designee, that the employment experience of the predecessor employer is not indicative of the future employment experience of the successor in interest.

(c) If a predecessor employer who transfers in whole his, her or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the predecessor employer and the successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business shall also be transferred to and combined with the employment experience of the successor in interest.

(d) The transfer of employment experience under (c) above is mandatory and not subject to appeal or protest.

(e) Upon the transfer in whole of the organization, trade, assets or business of a predecessor employer to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the Controller or his or her designee finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

#### 12:16-18.3 Transfer of predecessor's experience in part

(a) Where both a predecessor employer and a successor in interest are, at the time of the acquisition by the successor in interest of a portion of the business of the predecessor employer, under common ownership, management or control, then the employment experience attributable to the portion of the business so acquired shall be transferred to and combined with the employment experience of the successor in interest.

(b) The transfer of employment experience under (a) above is mandatory and not subject to appeal or protest.

[(a)] (c) A predecessor employer and successor in interest, except those addressed under (a) above, may jointly make application, on Form UC-47 (Joint Application for Transfer of Employment Experience), for transfer of that portion of the employment experience relating to that part of the organization, trade or business, or assets acquired by the successor in interest. [The] Under the circumstances set forth in this subsection, the employment experience will be transferred if the following conditions are met:

1.-3. (No change.)

Recodify existing (b)-(d) as (d)-(f) (No change in text.)

[(e)] A successor in interest shall not be entitled to a partial transfer of employment experience and will be assigned the new employer rate if:

1. The predecessor in interest transfers a portion of business activity to form a new employing unit while maintaining ownership or control either directly or indirectly of the new employing unit, and

2. The portion of the organization, trade or business, or assets acquired by the successor in interest is not distinguishable and identifiable from the organization, trade or business, or assets remaining with the predecessor.]

(g) Upon the transfer in part of the organization, trade, assets or business to a successor in interest, the employment experience of the predecessor employer shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the Controller or his or her designee finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

#### 12:16-18.4 Rate following transfer of predecessor's experience in part

[(a)] A predecessor employer who continues to operate after the transfer of a portion of employment experience to a successor shall continue to use the rate assigned for the period from the date of the transfer to the following July 1.]

[(b)] (a) The effective date of the transfer of a portion of employment experience from a predecessor to a successor in interest [will become effective on the date of acquisition, provided that the successor in interest is not a subject employer on its own. If the successor in interest is a subject employer on its own, the transfer will become effective the following July 1] shall be the first day of the calendar quarter following the acquisition by the successor in interest.

(b) As of the effective date of the transfer of employment experience in part, the employment experience rate of the successor in interest shall be recalculated by merging its existing employment experience, if any, with the employment experience acquired from the predecessor employer.

(c) As of the effective date of the transfer of employment experience in part, the employment experience rate of the predecessor employer shall be recalculated based on the employment experience remaining subsequent to the transfer.

(d) For the period from the date of the acquisition by the successor in interest of a portion of the business of the predecessor employer through the last day of the calendar quarter in which the acquisition occurred, the employment experience rates of the successor in interest and the predecessor employer shall be assigned as follows:

1. A successor in interest, which is not an employer subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq., in its own right as of the date of acquisition shall be assigned the new employer rate.

2. A successor in interest, which is an employer subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq., in its own right as of the date of the acquisition shall continue to use its existing rate.

3. A predecessor employer which continues to operate after the acquisition by the successor in interest of a portion of its business shall continue to use its existing rate.